

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Sponsorship Identification Rules	)	MB Docket No. 08-90
and Embedded Advertising	)	
	)	

**REPLY COMMENTS OF CBS CORPORATION**

Exactly one week before initial comments in this proceeding were due, “[t]he American financial system was shaken to its core.”<sup>1</sup> On Monday, September 15, 2008, Americans woke to news that Lehman Brothers Holdings Inc., the storied investment bank, faced imminent liquidation; that Merrill Lynch & Co., a firm whose very name and logo were emblematic of the vigor of the U.S. economy, had sold itself to Bank of America in a shot-gun transaction arranged over the weekend; and that one of the world’s largest insurers, American International Group Inc., was teetering on the brink of insolvency.<sup>2</sup>

In the following weeks, the American economy plunged into recession, which many economists predicted would be “deep [and] prolonged.”<sup>3</sup> The downturn in consumer confidence and spending led, in turn, to a slump in the advertising market that

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<sup>1</sup> See, Carrick Mollenkamp, Susanne Craig, Serena Ng and Aaron Lucchetti, “Crisis on Wall Street as Lehman Totters, Merrill Is Sold, AIG Seeks to Raise Cash,” *Wall Street Journal*, September 15, 2008, p. 1.

<sup>2</sup> *Id.*

<sup>3</sup> See, Vikas Bajaj and Charles Duhigg, “Fannie Mae's Years of Gains Evaporate in a \$29 Billion Hit,” *The New York Times*, November 11, 2008, p. B-1.

had a severe impact on media companies.<sup>4</sup> Particularly hard-hit were free, over-the-air broadcasters; still almost totally dependent on the single revenue stream of advertising, television stations saw their profits “walloped.”<sup>5</sup> These difficulties were compounded by the precarious condition of the Big Three automobile manufacturers,<sup>6</sup> long a major revenue source for broadcasters.

In short, conditions in the broader economy are likely to confront television stations with an extremely challenging environment for some time to come. But even after the current recession ends, the long-term factors that have placed the business model of television broadcasters under increasing strain – namely, vastly increased competition and dramatic technological change – will remain. The new sources of video entertainment and information that were fragmenting television audiences before the

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<sup>4</sup> See, e.g., Joe Mandese, “Ad Spending Confidence Falls To Recent Low, More Downside Than Upside For Most Major Media,” *Media Post*, November 19, 2008; Shara Tibken, “Media Company Shares Fall As Ad Concerns Grow,” Dow Jones Newswires, November 17, 2008 (available at <http://online.wsj.com/article/BT-CO-20081117-710107.html?mod=crnews>) Meg James, “Univision prepares for lean stretch ; The Spanish-language media giant posts a third-quarter loss and says it could make cuts,” *Los Angeles Times*, November 18, 2008, p. C-3; “Several media companies pare back on payroll due to ad downturn,” *Media Week*, October 27, 2008; Dawn C. Chmielewski, “NBC to Cut Spending Amid Downturn,” *Los Angeles Times*, October 18, 2008, p. C-2

<sup>5</sup> Martin Peers, “Broadcast Blues Hit Media Firms,” *Wall Street Journal*, November 8, 2008.

<sup>6</sup> Bradley Johnson and Jean Halliday, “Death of Detroit Would Wallop Ad World; A Failed Bailout Would Pain Media, Agencies -- Some More Than Others,” *Advertising Age*, November 17, 2008, p. 1. The cited article observes:

Some media are especially vulnerable. The four major TV networks last year generated a hefty 5.9% of revenue from the Big Three, according to TNS data. Most reliant was News Corp.'s Fox: 9.2% of the network's measured ad revenue came from Detroit.

current recession will still be available after recovery. And given the commercial skipping capabilities of the DVR, a return to robust economic health will not diminish advertisers' interest in reaching audiences in non-traditional ways that they regard as being more effective in a transformed technological environment.

The comments of parties supporting new regulation of “embedded advertising” reflect little sense of these realities. For example, the Writers Guild of America West (WGAW) recognizes that “viewers now watch programming with the use of digital video recorders (DVRs) and can skip commercials with the click of a button.”<sup>7</sup> Yet while disclaiming “any intent to limit the commercial viability of television programming,”<sup>8</sup> it calls for the Commission to impose a simultaneous disclaimer requirement that would likely be so annoying to viewers as to effectively end any demand for integrated advertising.<sup>9</sup>

Indeed, WGAW goes so far as to propose that the waiver of the sponsor identification requirement for television broadcasts of *theatrical films* be eliminated.<sup>10</sup>

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<sup>7</sup> Comments of the Writers Guild of America, West, Regarding the Rampant Use of Embedded Advertising, MM Docket 08-90, at 3 (hereafter “Writers Guild Comments”).

<sup>8</sup> *Id.*

<sup>9</sup> WGAW professes to be “startled” by the objection of broadcasters and advertisers to a simultaneous disclaimer requirement on the ground that viewers would likely find it disruptive. *Id.* Notably, the Screen Actors Guild (SAG) is less taken aback by this objection. While advocating onerous disclosure requirements that go far beyond what is now required – and which would have to be repeated both before and after a program – SAG is against the idea of making required disclaimers in a simultaneous crawl, expressing “fear[ ] [that] such ‘real-time’ disclosure may disrupt the viewing experience and distract from an actor's performance.” Comments of Screen Actors Guild, MM Docket 08-90, at 9 (hereafter “SAG Comments”).

<sup>10</sup> Writers Guild Comments at 3.

That waiver, which has been part of the sponsor identification rule since 1963,<sup>11</sup> was granted in recognition of the longstanding practice of product placement in the movie industry. WGAW's proposal that this exemption, which has resulted in no discernable harm to the general welfare, now be repealed is plainly indicative of its real purpose in this proceeding -- to completely abolish an essentially harmless revenue-producing and cost-defraying practice that it finds aesthetically offensive.

The real basis of WGAW's objection to integrated advertising is readily apparent in its comments. Thus WGAW states that "[a]rtistic integrity . . . requires that viewers be apprised of the commercial influence on the programs that WGAW members write."<sup>12</sup> A page later, it quotes WGAW president Patrick Verrone as writing to the Commission:

When writers are told we must incorporate a commercial product into the story lines we have written, we cease to be creators. Instead, we run the risk of alienating an audience that expects compelling television, not commercials.<sup>13</sup>

The Screen Actors Guild voices similar objections to integrated advertising:

[I]t is untenable for [an] actor . . . to deliver the lines which extol the virtues of specific product[s] or services. Actors are too often obligated to advertise a particular product -- without consultation, consent, or payment for doing these pitches -- within a television program. Actors are routinely asked at the last minute to perform lines endorsing a product.<sup>14</sup>

With respect, protecting "artistic integrity" is no part of the proper role of this Commission. And whether an actor should be required, as part of an assignment

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<sup>11</sup> *In re Applicability of Sponsorship Identification Rules*, 40 F.C.C. 141 (1963).

<sup>12</sup> Writers Guild Comments at 3.

<sup>13</sup> *Id.* at 4.

<sup>14</sup> SAG Comments at 3.

voluntarily undertaken, to deliver scripted lines making reference to a product or service “without consultation, consent, or payment” is an issue for the collective bargaining table, not an FCC rulemaking.

The Commission’s statutory mandate is limited “to mak[ing] available . . . to all the people of the United States . . . a rapid, efficient, nationwide, and world-wide wire and radio communication service.”<sup>15</sup> From the beginning, the Commission has recognized that effectuating this mandate would require that “the terms and conditions of program service must not be such as to block the flow of revenues into broadcasting.”<sup>16</sup> That observation is no less true today -- when the advertiser-supported model of free, over-the-air broadcasting is facing unprecedented challenges -- than it was in 1946 when the statement was first made.

Indeed, now more than ever it is essential that the Commission avoid regulations that impede broadcasters’ revenue opportunities on insubstantial grounds. The FCC has neither authority nor reason to regulate practices simply because they appear to some to reflect bad taste or “crass commercialism.” Judgments of this kind will ultimately be made by the viewing audience, and broadcasters insensitive to those judgments will fail.

The Commission should terminate this proceeding without the adoption of new

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<sup>15</sup> 47 USC § 151.

<sup>16</sup> Federal Communications Commission, *Public Service Responsibility of Broadcast Licensees* (1946), reprinted in *documents of American Broadcasting* 151, 224 (Frank J. Kahn, ed., 2ed. 1973)

rules concerning sponsor identification for “embedded advertising.”

Respectfully submitted,

CBS CORPORATION

By: \_\_\_\_\_

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November 21, 2008